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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
IN ACCORDANCE WITH ARTICLE 40 OF THE COVENANT

Fourth periodic reports of States parties
due in 1994

SPAIN*

[2 June 1994]

Introduction

1. After the predominantly legislative phase that took place in the Kingdom of Spain in the early years of democracy, this fourth periodic report will focus, in accordance with the Committee's guidelines, on the practice and decisions of the courts and other State bodies. The information on legislative matters contained in earlier reports will be updated, and examples will be provided of practice in the Kingdom of Spain in the area of protection of fundamental rights and freedoms.

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* For the initial report submitted by the Government of Spain, see document CCPR/C/4/Add.1, Add.3 and Add.5; for its consideration by the Committee, see documents CCPR/C/SR.141-143 and Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 40 (A/34/40), paras. 180-227. For the second periodic report submitted by the Government of Spain, see document CCPR/C/32/Add.3; for its consideration by the Committee, see documents CCPR/C/SR.585-589 and Official Records of the General Assembly, Fortieth Session, Supplement No. 40 (A/40/40), paras. 465-517. For the third periodic report submitted by the Government of Spain, see document CCPR/C/58/Add.1 and Add.3; for its consideration by the Committee, see documents CCPR/C/SR.1018-1021 and Official Records of the General Assembly, Forty-sixth Session, Supplement No. 40 (A/46/40), paras. 142-185.

2. Concerning the part of the report on general information to be provided in accordance with the consolidated guidelines for the initial part of the reports of States parties under the various international human rights instruments, including the Covenant (HRI/CORE/1, annex), the members of the Committee are requested to consult the core document on Spain.

Self-determination (art. 1)

3. The process of establishing the so-called "State of Autonomies", pursuant to the 1978 Constitution, may be considered as practically concluded, and a new phase has begun that may be described as one of improving or consolidating the system of autonomy.

4. In a spirit of constructive dialogue with the Committee, a statistical summary of the conflicts of jurisdiction between the State and the Autonomous Communities is provided below. It can be seen from this statistical information that the number of such conflicts has been diminishing with time, as the system of autonomy has been gaining strength within the Spanish democracy.

Conflicts of jurisdiction between the State and the Autonomous Communities

1980	2
1981	14
1982	49
1983	31
1984	65
1985	88
1986	96
1987	66
1988	66
1989	32
1990	29
1991	8
1992	7
1993	9

Attached are several decisions of the Constitutional Court in the matter of conflicts of jurisdiction between the State and the Autonomous Communities (document 2 1/).

1/ This document is available for consultation in the Secretariat's files.

5. Each of the Autonomous Communities already has its own High Court of Justice, within the framework of the judicial power established by the Organization of Justice Act.

6. As part of this current phase of improving and consolidating the system of autonomy, mention should be made of Organization Act No. 9/1992 of 23 December 1992, transferring powers to the Autonomous Communities that attained autonomy through article 143 of the Constitution and of the decision of the Tax and Financial Policy Board of 7 October 1993 under which, in exercise of joint fiscal responsibility in the financing of the Autonomous Communities, each Autonomous Community is assigned a percentage (15 per cent) of the cash revenue from the Personal Income Tax returns filed by taxpayers residing in it. This decision, which took effect on 1 January 1994, has been incorporated in the General Budget Act for 1994 (art. 96 (6)) (document 3 1/).

7. Finally, it should be stated that, while the system of Autonomous Communities provided for in the current Constitution, like any other human endeavour, is not perfect, it has proved to be useful and effective in resolving the pluralistic reality of Spain by channelling the old tensions into the ordered framework of the State of Autonomies. Problems have been and are being solved thanks to the democratic spirit and the constant daily efforts of all Spaniards to live together within the framework established by the Constitution, while preserving and respecting individual characteristics.

State of emergency (art. 4)

8. In this report we shall correct the erroneous approach of the discussion of this subject in the third periodic report, in accordance with the Committee's remarks on considering that report.

9. With regard to article 4 (1) of the Covenant, under article 55 (1) of the Spanish Constitution, the declaration of a state of emergency or a state of siege may entail the suspension of the rights laid down in articles 17, 18 (2) and (3), 19, 20 (1) (a), 1 (d) and (5), 21, 28 (2) and 37 (2).

10. In accordance with article 116 of the Constitution, Organization Act No. 4/1981 was issued on 1 June 1981 to govern states of alert, emergency or siege.

11. A state of alert may be declared by the Government of the nation in cases of serious disturbance of the peace, as described in article 4 of the above-mentioned Act. The declaration shall state the territorial limits, duration and effects of the state of alert, which may not exceed 15 days unless explicit authorization is given by the Congress of Deputies. No fundamental rights are suspended during a state of alert.

12. A state of emergency requires a substantiated request by the Government for authorization from the Congress of Deputies, "with an explicit mention of the rights whose suspension is being requested, which cannot be other than those listed in article 55 (1) of the Constitution" (Organisation Act No. 4/1981, art. 13). The Act carefully regulates the parameters of any suspension of these fundamental rights.

13. A state of siege, if warranted under article 32 of Organization Act No. 4/1981, shall be declared by the Congress of Deputies at the request of the Government.

14. Since the reintroduction of democracy in Spain, no state of alert, emergency and/or siege has been declared.

15. As regards article 4 (2), states of emergency and/or siege may at no time entail derogation in respect of the rights laid down in articles 6, 7, 8 (1) and (2), 11, 15, 16 and 18 of the Covenant. It is therefore absolutely clear that there is no possibility of any such derogation.

16. No information is needed on article 4 (3), since no state of emergency and/or siege has been declared to date.

Non-discrimination and equality of the sexes (arts. 2 (1), 3 and 26)

17. The Committee is referred to the information contained in the discussion on these articles in earlier reports.

18. As regards equality of the sexes, in addition to the legislative and administrative provisions already referred to, we attach a recent Constitutional Court judgement of 28 February 1994 which strongly reaffirms the right to equality between the sexes and rejects evaluation criteria based on sex as discriminatory (document 4 1/).

19. In line with the constructive dialogue with the Committee, and on the basis of its guidelines, we attach an important work by the Institute for Women on the situation of women in 1992. The information contained in that report shows that women are equal to men as regards education, including university studies; that the percentage of women in employment is constantly increasing; but that there is one field, the strictly political field, where women's participation is still appreciably lower than men's. From the legislative or administrative standpoint there is nothing to prevent or impede access by women to political life, but this is the fact of the matter. However, pressure by women's groups and associations together with the training and instruction of women, which is equal to that of men, and their significant participation in the labour and professional world give reason to believe that the gap between men's and women's participation in the political field will inevitably narrow, although not as rapidly as in other social areas (document 5 1/).

20. As stated earlier, non-discrimination is guaranteed in Spain. When it is necessary to strengthen this protection even more, efforts are made in that direction.

21. Along with other effects and causes, the world economic crisis and migration movements have led to a re-emergence of racially discriminatory theories and behaviour in certain countries, which make it necessary to move forcefully to prevent and combat such thoroughly condemnable practices. Regarding practice, with which the Committee concerns itself in its comments, the following facts are worthy of mention: the Constitutional Court judgement of 11 November 1991: the right to freedom of expression cannot be taken to

include racist expressions (document 6 1/). The draft of the new Penal Code, currently being prepared by the Government for submission to the Cortes, contains a number of important innovations relating to this subject: the commission of offences against the individual for reasons relating to the victim's ethnic or national origin is introduced as an aggravating circumstance, and the draft Code provides for the new offence of direct incitement to discrimination against groups or individuals because of their national origin or membership of an ethnic group or race. The aggravating circumstance introduced in the draft is contained in article 22, circumstance 5: "Committing any of the offences against individuals for reasons relating to the victim's ethnic or national origin", and the new offence introduced, that of incitement, is contained in article 490: "Anyone who, through the press, broadcasting or any other public medium, directly incites or advocates discrimination against individuals or groups because of their national origin or membership of an ethnic group or race shall be liable to a prison term of one to three years and a fine of 6 to 12 months".

22. In view of the difficulties that might arise in guaranteeing the right to non-discrimination, the Kingdom of Spain is strengthening protection against racial discrimination by attempting to nip in the bud dangerous and inadmissible attitudes in this sphere, contrary to equality.

Article 5

23. Once again no question has arisen in this respect under the Spanish system.

Right to life (art. 6)

24. Reference is made to the discussion of this article in the third periodic report and to its consideration by the Committee, and the following update is provided.

25. The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, which was adopted by the United Nations General Assembly on 15 December 1989, was ratified by Spain on 22 March 1991.

26. In accordance with article 2 of the Second Optional Protocol, Spain reserves the right to apply the death penalty in the exceptional and highly serious cases laid down in Organization Act No. 13/1985 of 9 December 1985 containing the Code of Military Justice, in time of war, as defined in article 25 of the above-mentioned Organization Act.

27. As laid down in article 15 of the Constitution, Spain is a State that has abolished the death penalty, "except as provided for by military criminal law for time of war". It was for that reason that Spain was able promptly to ratify the Second Optional Protocol to the Covenant.

28. Therefore, the possibility of applying the death penalty in Spain is dependent on two absolutely exceptional circumstances.

29. First exceptional circumstance: the death penalty is possible only "in time of war". In conformity with article 25 of Organization Act No. 13/1985, the death penalty may only be imposed in time of war, i.e. "if war has been formally declared or there exists a general outbreak of hostilities with a foreign Power". It is for the King of Spain to make a formal declaration of war, on authorization by the Cortes Generales, in accordance with article 63 (3) of the Constitution. It is therefore absolutely clear that the death penalty is only possible in time of war. It is equally clear that "time of war" requires either a formal declaration of war or a general outbreak of hostilities with a foreign Power. And there can be no confusion between states of emergency and/or siege and time of war since these are two completely different situations. Organization Act No. 13/1985 itself states in article 14:

> "For the purposes of this Code, the term 'time of war' shall be understood to include the period of time that begins with a formal declaration of war, the ordering of a mobilization for an imminent war or a general outbreak of hostilities with a foreign Power, and ends when such hostilities cease."

30. Second exceptional circumstance, which must be concurrent with the first: in accordance with article 25 of Organization Act No. 13/1985, and obviously also in accordance with article 2 (1) of the Second Optional Protocol and the reservation of the Kingdom of Spain, the death penalty may only be imposed "in extremely serious cases duly substantiated in the judgement", for "extremely serious offences" and in "exceptional and highly serious cases".

31. The procedural aspect is governed by the Military Procedure Act, adopted in Organization Act No. 2/1989 of 13 April 1989. According to article 1 of the Act, "Penalties may only be imposed by the military courts by virtue of a judgement handed down by a competent judge or court and in conformity with the procedure laid down in the Act and in the international agreements, conventions or treaties to which Spain is a party" (document 7 1/).

32. A judgement that imposes a death sentence (only possible, it will be remembered, in time of war and in extremely serious, duly substantiated cases) may be subjected to judicial review on application to the Supreme Court. Under the Military Procedure Act, the remedy of judicial review is always available, even if the convicted person does not apply for it. This remedy is therefore understood as being accepted for the benefit of that person, and if he does not designate a lawyer to defend him, one will be appointed officially, i.e. by the Bar Association.

Treatment of prisoners and other detainees (arts. 7 and 10)

33. As regards torture and cruel, inhuman or degrading treatment or punishment, attached are several judgements of the Constitutional Court and the Supreme Court which reflect Spain's interpretation of this offence: "An analysis of this offence, extremely serious because its commission not only exposes its perpetrators to censure, but also, as a personal offence, it jeopardizes the credibility of the social, democratic State based on the rule of law ..." (document 27 1/).

34. Prevention, through the teaching of human rights and the establishment of legal safeguards, is very important in this connection.

35. Although there is no code of ethics for the State security forces and bodies, in the sense of a code structured as such, the preamble to Organization Act No. 2/86, which governs the State security forces and bodies, states that, in accordance with the guidelines set forth by the Council of Europe in its declaration on the police and by the United Nations General Assembly in the Code of Conduct for Law Enforcement Officials, a few basic principles for action have been established, set forth in chapter II, article 5, which are developing into an authentic code of ethics, binding on all members of the State security forces and bodies.

"Article 5.

"The following are basic principles for the conduct of members of the security forces and bodies.

1. Compliance with the legal order, especially:

(a) Performing their functions with strict respect for the Constitution and the rest of the legal order.

(b) Performing their functions with absolute political neutrality and impartiality and, therefore, without discrimination of any kind for reasons of race, religion or opinion.

(c) Acting with integrity and dignity. In particular, refraining from and firmly opposing any acts of corruption.

(d) Abiding, in their professional functions, by the principles of hierarchy and subordination. In no case may due obedience be used to defend orders involving the commission of acts that are obviously offences or are contrary to the Constitution or the laws.

(e) Cooperating with the administration of justice and assisting it under the conditions established by law.

2. Relations with the community, especially:

(a) In the performance of their professional duties, preventing any improper, arbitrary or discriminatory practice entailing physical or moral violence.

(b) Observing careful and correct behaviour at all times in their relations with the public, whom they shall endeavour to assist and protect, where the circumstances so advise or they are requested to do so. They shall provide the fullest possible information on the grounds and purpose of any such action.

(c) In performing their duties, they shall act with the necessary firmness, and without delay when necessary to avoid serious, immediate

and irreparable damage; in so doing they shall be guided by the principles of appropriateness, advisability and proportionality in using the means available to them.

(d) They shall only use weapons in situations where their lives or physical integrity or those of third persons are at reasonably serious risk, or in such circumstances as may imply a serious risk for public safety and in accordance with the principles laid down in the preceding paragraph.

3. Treatment of detainees, especially:

(a) The members of the security forces and bodies must duly identify themselves as such when making an arrest.

(b) They shall protect the life and physical integrity of the individuals they have arrested or who are under their custody and shall respect individuals' honour and dignity.

(c) When arresting an individual they shall comply with and observe the procedures, time-limits and requirements laid down by the legal order.

4. Professional dedication

They shall perform their functions with complete dedication, acting always in defence of the law and public safety, at any time or place, whether or not they are on duty.

5. Professional secrecy

They shall observe strict secrecy with regard to all information they may acquire by reason of or in connection with the performance of their duties. They shall not be obliged to reveal their sources of information except where the performance of their duties or the provisions of the law require otherwise.

6. Responsibility

They are personally and directly responsible for acts committed in the performance of their duties which infringe or violate legal rules, as well as the regulations governing their profession and the principles set forth above, without prejudice to the liability that might devolve on the Public Administration in that connection[a].

36. Guarantees are set forth in the procedural legislation, which will be described when individual freedom is discussed.

37. The legal classification of the offence of torture in the Penal Code has been significantly amended in the draft of the new Penal Code, due shortly to be approved by the Government for submission to the Cortes. The new draft broadens the acts included in this offence and also increases the penalties.

38. With regard to the new description of the offence of torture, articles 514-518 of the new draft read as follows:

"Article 514

1. Any public authority or official who, in the performance of his duties and for the purpose of obtaining a confession or testimony from the victim or a third party or punishing him for an act he may have committed or is suspected of having committed, subjects him to conditions or procedures that intimidate him or force him to act against his will, or in any other way undermine his moral integrity, shall be liable to a prison term of two to six years if the infringement was a serious one, and a prison term of one to three years if it was not. In addition to the penalties mentioned, the penalty of general disqualification for one to six years shall be imposed in all cases.

2. The same penalties shall be incurred respectively by authorities or staff of prisons or minors' protection or correctional centres who commit any of the acts referred to in the above paragraph against detainees, inmates or prisoners.

"Article 515

Any public authority or official who, exceeding his functions and in cases other than those included in the previous article, impairs an individual's moral integrity shall be liable to a prison term of two to four years if the infringement was a serious one, and a prison term of six months to two years if it was not. In addition to the above-mentioned penalties, the perpetrator shall in any event be liable to specific disqualification from public employment or public office for a period of two to four years.

"Article 516

The penalties established in the preceding articles shall be imposed on any authority or official who fails in the duties of his post and allows other persons to carry out the acts described therein.

"Article 517

If, in addition to the impairment of moral integrity, the offences described in the preceding articles result in injury or harm to life, physical integrity, health, sexual liberty or the property of the victim or a third party, those acts shall be punished separately with the penalties attached to them for the offences or misdemeanours committed.

"Article 518

Any public authority or official who knowingly prevents a person from exercising the civil rights recognized in the Constitution and the laws shall be liable to the penalty of specific disqualification from public employment or public office for a period of 6 to 10 years."

39. The foregoing brings the characterization of this offence in Spain into line with the definition laid down in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

40. As regards evidence, on the basis of questions raised during the consideration of the report, the following should be mentioned: in the first place, as the Constitutional Court has stated (for example, in its judgement of 15 April 1991), "The only evidence that may be considered authentic and binding for the organs of criminal justice when handing down judgements is that submitted in the oral proceedings".

41. This principle is naturally observed by all the courts, as illustrated by the attached judgement of the National High Court dated 30 October 1993 in the Barberá et al. case. (This was a case that reached the European Court of Human Rights, which found, that there had been no violation of the right to presumption of innocence but then concluded that there had been a violation of article 6 (1) of the European Convention on Human Rights considering the proceedings as a whole. Since that judgement, full evidence has to be submitted in the oral proceedings, and a judicial step such as "evidence to be taken as forming part of the file" is considered to be "a routine step devoid of value". The Constitutional Court declared the trial and re-trial to be null and void, in a judgement that was certainly innovative in the European legal context. The new oral proceedings, on the basis of the evidence submitted, produced a verdict of acquittal owing to the "unproven" nature of the charges) (document 8 1/).

42. Secondly, the evidence must be gathered with strict respect for fundamental rights and legal requirements. For example, prisoners' statements to the police or the Civil Guard have to be taken with a lawyer present and judicial acts require the presence of the clerk of the court, who is responsible for the authenticity of public documents. Also, for example, in order for identification parades to have evidentiary effect that can be used in the oral proceedings they must be held on judicial premises and with all the formalities required by the procedural rules governing them. As regards the presumption of innocence, judgements reflecting its observance in Spanish law are attached.

43. Thirdly, evidence gathered as part of police or pre-trial proceedings in accordance with legal formalities can have probative force "provided that it is reproduced in the oral proceedings under conditions enabling the defence counsel of the accused to examine it". Examination of the evidence by the defence during the oral proceedings makes it possible to guarantee the rights of the defence and to evaluate the evidence in the oral proceedings.

44. In accordance with the Committee's comments, incommunicado detention or solitary confinement is discussed below. Regulations governing this punishment are laid down in the General Prisons Act (document 9 1/).

45. In the first place, this punishment, like any other that may be ordered, requires a document to be drawn up informing the individual of the offence attributed to him and enabling him to defend himself either orally or in writing. All disciplinary sanctions resulting from these proceedings shall be imposed by the collegiate body, the Prisons Administration Board.

Solitary confinement shall only be applied in cases where there is obvious aggressiveness or violence on the part of the inmate or when the inmate repeatedly and seriously disturbs harmonious relations in the institution. In no case shall it last over 14 days.

46. In the second place, all disciplinary sanctions are open to appeal before the Prisons Inspection Judge, and the filing of the appeal suspends the sanction except when the sanction cannot be delayed because the act in question was one of serious indiscipline. In cases of solitary confinement, appeals shall be given urgent and preferential treatment.

47. In the third place, the cell in which the solitary confinement is conducted shall be the one usually occupied by the inmate; if he shares it with others, either for his own safety or for the smooth running of the institution, he shall be transferred to an individual cell of similar size and condition. In any event, the cell in which the punishment is served shall be similar in character to the rest of the cells in the institution.

48. Finally, the serving of the penalty of solitary confinement shall be reported on by the prison doctor, who will see the inmate daily for as long as he remains in solitary confinement and inform the prison governor of the inmate's state of physical and mental health and, as appropriate, of the need to suspend or change the sanction ordered. This punishment shall not be applied to pregnant women or to women who have given birth less than six months previously, to nursing mothers or to mothers who have children with them (General Prisons Act, arts. 41 et seq. and arts. 104 et seq. of its Regulations).

49. Regarding the Ombudsman (Defensor del Pueblo), also mentioned during the consideration of these articles, attached is the Act regulating that office and the latest of the Ombudsman's reports to the Cortes Generales, submitted in 1992 (documents 10 and 11 1/).

50. As requested by the Committee in its comments, attached are the following texts on subjects that might be considered as affecting this right: Act No. 35/1988 of 22 November 1988, concerning assisted human reproduction; Act No. 42/1988 of 28 December 1988 concerning the donation and use of human embryos and foetuses or their cells, tissues or organs. Due to their importance, copies are also attached of Act No. 25/1990 of 25 December 1990 concerning medication and of Royal Decree No. 561/1993 of 16 April 1993 concerning requirements for the conducting of clinical studies (document 12 1/).

Liberty and security of person (art. 9)

51. Concerning this right stipulated in the Covenant: first, following the consideration of the third periodic report the following additional information is provided on detention of individuals.

52. Generally speaking, the operative legal provision is article 520 of the Criminal Procedure Act:

"1. Pre-trial detention shall be carried out in the manner least harmful to the person, reputation and property of the detainee.

Pre-trial detention may not last longer than the time strictly needed to conducting the inquiries aimed at elucidating the events. The detainee shall be released or placed at the disposal of the judicial authority within the time periods laid down in this Act, and in any event after not more than 72 hours.

"2. Any person detained shall be informed immediately, in a way that he can understand, of the acts attributed to him and the reasons why he has been deprived of liberty, as well as his rights, especially the following:

(a) The right to remain silent and make no statement if he does not so wish, not to answer some or all of the questions put to him or to indicate that he will only make a statement before the judge.

(b) The right not to testify against himself and not to confess guilt.

(c) The right to designate a lawyer and request that the lawyer be present to help him with the police and judicial proceedings involved in making his statement and to attend any identification exercise involving him. If the detainee does not designate a lawyer, one will be officially appointed.

(d) The right to have a relative or person of his choice informed of his detention and the place where he is being held at all times. Foreigners are entitled to have this information communicated to their country's consulate.

(e) The right to free assistance from an interpreter, when the accused is a foreigner who does not understand or speak Spanish.

(f) The right to be examined by the forensic physician or his legal substitute and, in his absence, by the physician of the institution in which he is being held or any other working for the State or other public administrations.

"3. If the detainee is under age or legally incompetent, the authority holding him shall convey the information mentioned in paragraph 2 (d) to those exercising parental authority, guardianship or de facto custody and, if they cannot be found, the Office of the Government Procurator shall immediately be informed. If the under age or legally incompetent person is a foreigner, his country's consulate shall be officially notified of his detention.

"4. The judicial authority and staff holding the detainee shall refrain from making recommendations on his choice of lawyer and shall inform the

Bar Association, in a manner that can be verified, of the name of the lawyer chosen by the detainee to assist him or of his request to have a lawyer appointed officially. The Bar Association shall notify the lawyer designated that he has been chosen, in order that he may accept or refuse. If the designated lawyer does not accept the assignment, cannot be found or does not appear, the Bar Association shall proceed to designate a lawyer officially. The lawyer designated shall go to the detention centre as soon as possible and in any event not later than eight hours after the Bar Association has been informed.

Once the eight-hour period after the Bar Association has been informed has elapsed, if, for no justifiable reason, no lawyer comes to the place where the detainee is being held, the detainee's statement may be taken or his identification proceeded to, if he so consents, without prejudice to the responsibilities incurred by the designated lawyers for any failure to fulfil their obligations.

"5. However, the detainee may refuse mandatory legal assistance if he is being detained for acts that might be classified exclusively as offences against road safety.

"6. The lawyer's assistance shall consist of the following:

(a) Requesting, if necessary, that the detainee should be informed of the rights laid down in paragraph 2 of this article and that the medical examination referred to in paragraph 2 (f) should be conducted.

(b) Once the proceeding in which the lawyer has participated has been completed, requesting the judicial authority or official who conducted it to make a statement or elaborate on the particulars he deems appropriate, including in the record an indication of any effect that it might have had during the proceeding.

(c) Meeting privately with the detainee on completion of the proceeding in which he has participated."

53. Organized crime and terrorist offences carry a special detention regime, owing to the specific features of this type of offence, as follows:

(a) Possibility of extending the detention to a maximum of 5 days - i.e., the 72 hours of the general system plus 48 hours. Requirement: request for extension through a substantiated communication within 48-hours following the detention; authorization of the extension by the judge, also substantiated.

(b) Possibility of incommunicado detention. This must be requested, and the judge shall grant or deny it by a substantiated decision within 24 hours. Effects of incommunicado detention: a detainee being held in incommunicado detention shall enjoy the rights laid down in article 520 of the Criminal Procedure Act, with the following modifications: while the incommunicado detention authorized by the judge continues, he shall have the assistance of a lawyer, although in these circumstances it will not be a

lawyer of his choice but one appointed by the respective Bar Association. The detainee shall not be able to exercise the right provided for in article 520 (2) (d) (Right to inform a relative or person of his choice that he has been detained and where he is being held). In addition, the detainee shall not be able to meet privately with his lawyer on completion of the proceeding in which the lawyer has participated. These limitations shall always be interpreted restrictively. The judge may at any time during the detention request information and assess the detainee's situation, either personally or by delegating the examining magistrate of the district or administrative area where the detainee is being held (Criminal Procedure Act, arts. 520 bis and 527).

54. In accordance with the Committee's comments, information follows on how this system is applied with respect to the detention of persons alleged to be connected with terrorist activities.

55. In 1993, the State security forces and bodies arrested 127 persons for suspected involvement in terrorist activities.

56. Of these persons, seven were arrested under an order of a judicial authority or the government procurator's office (search and arrest warrants), although the contents of article 520 bis of the Criminal Procedure Act were not applied to them. In the other 120 cases, the security forces and bodies requested the competent judicial authority to order incommunicado detention, which was granted in 114 cases; in the 6 remaining cases the detainees were set free before the judicial authority had decided on the request, so that they were held in incommunicado detention until their release, in accordance with the provisions of article 520 bis (2) of the Criminal Procedure Act.

57. Of the 89 detainees placed at the disposal of the judicial authority, 20 were released (3 on bail and the great majority with the obligation to report periodically). The remaining 69 detainees were ordered imprisoned by the judicial authority.

58. The judge ordered the detention of 43 persons to be extended, as follows:

By 48 hours	2
By 36 to 48 hours	3
By 36 hours	2
By 24 to 36 hours	13
By 24 hours	11
By 12 to 24 hours	7
By 12 hours	1
By less than 12 hours . . .	4
TOTAL	43

59. Second, concerning the suspension of release from prison, article 504 bis of the Criminal Procedure Act was introduced by Organization Act No. 4/88 of 25 May 1988, after the repeal of Organization Act No. 9/84 of 26 December 1984

relating to armed gangs and terrorist elements. This provision introduced a modification of the general regime provided for in article 504, its specific feature being that, when a detainee connected with armed gangs or terrorist activities is granted release, the release shall not take place until the decision ordering it is signed, provided that the appellant is the government procurator's office.

60. Once this appeal has been filed, the release is suspended, with two specific features: (i) the suspension cannot exceed one month, and (ii) the suspension shall not take effect when the time period for pre-trial detention and its corresponding extensions as laid down in article 504 have elapsed.

61. This provision, the constitutionality of which has been repeatedly questioned by jurists, was declared null and unconstitutional by a recent judgement of the Constitutional Court, No. 71/94 of 3 March 1994. The judgement recognized that article 504 bis of the Criminal Procedure Act did not infringe the fundamental right to a trial with full guarantees (Spanish Constitution, art. 24 (2)), the court's exclusive authority to enforce a judgement (Spanish Constitution, art. 117 (3)) or the purpose of the government procurator's office (Spanish Constitution, art. 124 (1)), but that it nevertheless infringed the essence of the fundamental right to personal liberty laid down in article 17 of the Constitution, with a corresponding infringement of the provisions of article 53 (1) (2) of the Constitution.

62. According to the Constitutional Court's reasoning, article 504 bis of the Criminal Procedure Act is unconstitutional because it deprives the detainee of the guarantee inherent in his right to liberty, namely action by the courts for the adoption or continuation of a situation of precautionary deprivation of liberty. According to articles 17 (2) and (4) of the Spanish Constitution, every detainee is entitled to such action and the legislature therefore cannot either eliminate that guarantee or prevent its implementation once it has been ordered by the judge in a substantiated decision. A copy of Constitutional Court judgement No. 71/1994 of 3 March 1994 is attached (document 13 1/).

63. During the consideration of the third periodic report, the Committee raised the question of a prison term imposed on an individual for burning a flag, an issue which affects personal freedom and, according to one member of the Committee, might affect freedom of expression. Attached is a copy of Constitutional Court Judgement No. 63/1993 of 1 March 1993, to the effect that in one case of insult to the flag, which appears to be the case mentioned by the Committee, the Court has granted an application for amparo (enforcement of constitutional rights) on the ground of infringement of the principle of equality due to discrimination for reasons of opinion (document 14 1/).

64. With regard to habeas corpus, which is governed by Organization Act No. 6/1984 of 24 May 1984, discussed in the previous report, it should be explained that according to article 2 this remedy is applied for to the examining magistrate of the place where the person deprived of liberty is being held.

65. After the consideration of the third periodic report, Organization Act No. 1/1992 of 21 February 1992 concerning public security, was published in

Spain. A controversial provision of this Act, article 21 (2) on entering the home, was declared unconstitutional by the Constitutional Court in a judgement dated 18 November 1993 (document 15 1/).

Article 11

66. The relevant information concerning the content of this article has already been supplied in earlier reports.

67. With respect to pre-trial detention, the following information is in addition to that given in previous reports, and after consideration of the third periodic report. Under Spanish law, the duration of pre-trial detention is not automatically determined by the limits set forth in article 504 of the Criminal Procedure Act, according to the penalty applicable for the offence. Under Spanish law, a distinction is made between: (a) the maximum duration of pre-trial detention, which is fixed according to the penalty applicable for the offence with which the accused is charged. Exceeding this maximum duration or failing to meet the requirements for its extension entail an immediate and automatic breach of the law. (b) Reasonable duration of pre-trial detention.

68. Pre-trial detention is an exceptional measure depriving a person of his freedom. The decision to impose it must be substantiated, it may not extend beyond a reasonable period, and due consideration must be given to the circumstances of the case. Accordingly, pre-trial detention, which does not exceed the maximum legal duration but whose duration is not reasonable, may entail a breach of the law. Therefore, a distinction is made between (i) maximum duration, based on the penalty imposed for the offence with which the person is charged, as an abstract delimiting criterion, without taking into account the specific circumstances of the case; and (ii) reasonable duration of pre-trial detention, which is unrelated to maximum duration and must be determined according to the specific circumstances of the case. The Constitutional Court of Spain made this point abundantly clear, inter alia, in a judgement of 30 October 1991:

> "There is no doubt that, if the time-limits set forth in article 504 of the Criminal Procedure Act are not respected, then there has been an infringement of the right proclaimed in article 17 (4) of the Constitution; but, without necessarily exceeding such time-limits, that same fundamental right may also be infringed if the accused remains in pre-trial detention for a period which, having regard to the circumstances of the case, may objectively be considered to exceed what is reasonable."

In the same judgement the Constitution Court goes on to state:

> "For the purpose of determining whether the duration of the pre-trial detention has exceeded such a reasonable period, reference must be made to the doctrine of integration of standards that this Court has formulated in consonance with the rulings of the European Court of Human Rights (Neumeister, judgement of 27 June 1968; Nemhoff, judgement of 27 June 1969; Stogmüller, judgement of 10 November 1969; Skoogstrom, judgement of 2 October 1984, Bezicheri, judgement of 25 October 1989; and

Letellier, judgement of 26 June 1991). According to this doctrine, in evaluating that period, account must be taken, on the one hand, of the actual duration of the pre-trial detention, and on the other, of the consideration of the complexity of the matter, the action taken by the judicial body and the conduct of the appellant, so that the need to extend the detention, in order to ensure that the accused attends the oral proceedings, is not due only to the failure of the examining magistrate to take action or to obstructionism on the part of the defence through the submission of inadmissible appeals or delaying tactics designed solely to exhaust the time-limits of the pre-trial detention."

XI. Liberty of movement and expulsion of aliens (arts. 12 and 13)

69. Regarding the free movement of aliens, and the request for information regarding the application of article 6 of Organization Act No. 7/1985 that was made when the third report was considered, according to information from the Ministry of the Interior, Departments of the Police and Aliens and Asylum, "there is no record of the measures provided for in article 6 of Organization Act No. 7/1985 having been applied".

70. Reference is made to the information supplied in earlier reports, which is now updated with the information that a bill is currently going through parliament to amend Act No. 5/1984 of 26 March 1984, governing the right of asylum and refugee status. The most important amendments include the introduction of a new regulation governing the consequences of a decision to deny asylum. The present regulation governing the consequences of denial of asylum has had a marked effect in inducing economic immigrants to seek asylum, because it places an alien whose application for asylum is rejected, even though it may be completely unfounded, in a privileged position vis-à-vis the person who has followed the regular migration procedures established by Spanish law and requested the appropriate visa. (Attached is Act No. 9/1994 of 19 May 1994, as document No. 29 1/, which amends Act No. 5/1984 of 26 March 1984 governing the right of asylum and refugee status.)

71. The amendment is therefore based on the general principle, accepted by all the contracting parties to the Geneva Convention, whereby a person requesting asylum whose application is either not accepted for processing or is refused must leave Spanish territory, unless he meets the requirements to enter and stay in the country according to the general rules governing aliens or unless for humanitarian reasons or for reasons of public interest he is authorized, as an exception, to do so.

72. The bill grants the Spanish Office of the United Nations High Commissioner for Refugees the right to report on the application submitted by the person requesting asylum. If its report is favourable, the expulsion will be suspended.

Right to a fair trial (art. 14)

73. Reference is made to the information supplied in earlier reports, which is updated as follows.

74. Attached is specific information on the efforts to provide the judiciary with the human and material resources to enable it to provide a better public system of justice during the period 1990-1993. Particular mention is made of the fact that the number of 1,857 courts which existed before 1990 has been significantly increased by the creation of 397 new courts (document 17 1/).

75. As far as the right to be tried without undue delay is concerned, it serves little purpose to guarantee the protection of fundamental rights if the public system of justice handles cases so slowly that even though the guarantee does exist, it turns out to be illusory.

76. In the face of this difficulty, and with respect to the specific matter of fundamental rights, the Kingdom of Spain has Organization Act No. 62/1978 of 26 December 1978. These procedures are prompt and specific and their potential for protecting human rights is a fact of judicial practice in Spain. Again with reference to this Act, it is obvious from its article 7 (4) that the burden of proof is reversed. In ordinary judicial proceedings, the measure or provision being challenged is not suspended, unless the appellant demonstrates that, if carried out, it will result in injury that will be impossible or difficult to redress. However, as part of the safeguarding of fundamental rights and precisely because the object of the proceedings is an alleged infringement of a fundamental right, the application of the measure or provision being challenged will be immediately suspended, unless the administration against which the appeal is made shows that the suspension will or may cause serious damage to the public interest.

77. The Kingdom of Spain has established a system for protecting citizens against undue delays in proceedings, which is described below.

78. The system is based on a distinction between human rights which may be subject to instantaneous violation and other human rights which may be subject to continuous violation over a period of time.

79. For example, the right to life is violated instantaneously, whereas the right to freedom from unlawful detention or the right to be tried within a reasonable period are violated continuously over a period of time. In the event of a continuous violation of a human right over a period of time, the primary and priority form of redress is redress in substance, for example the immediate cessation of unlawful detention, once it has been established. Where there has been unlawful detention, redress in substance is accompanied by redress in the form of compensation. The urgent consideration is to put an end to the violation of the human right which is occurring and then, even though redress in substance has not been claimed, to determine redress in the form of compensation.

80. This approach to the protection of liberty has shaped protection of the human right to trial without undue delay, a distinction being made between: (i) reparation in substance in respect of an ongoing violation of the human right to trial without undue delay; and (ii) redress in the form of compensation.

81. With regard to redress in substance, any party to any proceedings who considers that they are unreasonably protracted may, at any time and without

strict formalities, request the court concerned to immediately end the delay which is occurring. Should the court fail to grant the request, that party may directly - i.e., without exercising any kind of prior remedy - submit an application for amparo to the Constitutional Court. If the Constitutional Court finds that there has been an unreasonable delay, it will declare that the right has been violated and order the immediate cessation of the hold-up in proceedings. This is how, in Spain, violation of the human right to trial without undue delay is redressed in substance, with the court concerned, or the Constitutional Court as appropriate, putting an immediate end to the undue hold-up in proceedings.

82. Redress in the form of compensation is of two kinds: supplementary compensation after redress in substance; and non-supplementary compensation when no claim has been made for redress in substance or such redress is not possible since there is no longer any hold-up in proceedings to be ended. In both cases, the procedure to be followed is laid down in articles 292 et seq. of the Organization of Justice Act and is conducted before the Ministry of Justice. In the event of disagreement with the administrative decision, application may be made for judicial review.

83. In the case of the first type of compensation, i.e. supplementary compensation after redress in substance, there is already a decision of the court or of the Constitutional Court finding a violation of the right and ordering its immediate cessation. The administrative procedure, and as appropriate the subsequent judicial procedure, involves quantifying the moral injury and, as the case may be, the material injury resulting from the excessive delay in proceedings already declared by the competent body.

84. The second type, namely non-supplementary compensation, may be granted when redress in substance is claimed after the event, namely when it is no longer possible to provide redress in substance since the hold-up in proceedings has ceased, or the proceedings or part of the proceedings are excessively long but have concluded without the party concerned protesting about the undue delay.

85. Spanish law does not require a party to protest during the proceedings over their excessive duration. Consequently, irrespective of whether or not the party concerned has protested about the delay, the State has a responsibility to render justice within a reasonable time. And as a consequence of that duty and responsibility, the State must compensate the party for the moral injury deriving from the non-performance of a State obligation and, as appropriate, the resultant material injury. For the purposes of such compensation, if there has been no declaration by a court or by the Constitutional Court concerning the excessive duration of proceedings, the General Council of the Judiciary shall report on the existence of such excessive duration and the Administration shall set the amount of compensation to be awarded to the victim.

86. Lastly, it should be mentioned that Spanish law requires administrative compensation proceedings not to exceed six months (Royal Decree No. 429/1983 of 26 March 1983) (document 18 1/).

87. This system of safeguards has been expressly recognized by the European Commission of Human Rights, and we attach two relevant decisions dated 6 July and 1 September 1993 respectively (document 19 1/).

88. The presumption of innocence is a right guaranteed in Spain by the Constitution, by the Covenant and other international treaties that have been ratified and hence incorporated in internal law, and by procedural laws. In accordance with the Committee's comments, decisions of the Constitutional Court on this matter are attached (document 20 1/).

89. With regard to the reference in paragraph 109 of the third periodic report to the possibility of holding oral proceedings without the accused being present, which caused the Committee some concern, the following information is provided.

90. Firstly, the absence concerned is that of the accused, namely of a person who knows the charge against him and who has made a written statement regarding that charge with the assistance of his lawyer or attorney or, where he has not appointed any, a lawyer or attorney named ex officio, i.e. designated by the Bar Association.

91. Secondly, the provision concerns unjustified absence. In accordance with the Covenant and Spanish law, the accused is entitled to be present during the proceedings. However, if the accused, while being fully conversant with the charge against which he has already defended himself before the examining magistrate, does not, of his own volition, attend the oral proceedings despite being correctly summoned to do so, this conduct cannot lead to the proceedings being suspended, since it is easy to conceive of such absence being used as a ruse to defer judgement sine die. This constitutes unjustified absence.

92. Thirdly, the mere unjustified absence from the oral proceedings of a person possessing all the characteristics of a defendant, with all that that entails, does not in itself determine the non-suspension of the oral proceedings. For the purposes of non-suspension, Spanish law requires: firstly, that the government procurator or the complainant should expressly request non-suspension; secondly, that defence counsel for the accused should make a report on the non-suspension requested; and, thirdly, that the judicial organ should consider that there is sufficient evidence to proceed and that the penalty requested does not exceed one year's deprivation of liberty.

93. Fourthly, an accused person who shows just cause why he did not attend the oral proceedings may of course exercise all his rights of recourse against the judgement rendered.

94. Accordingly, the legal requirements attaching to the non-suspension of oral proceedings because of the unjustified absence of the accused can be seen to be in compliance with the Covenant, since the right of defence is guaranteed at all times, the lawyer of the absent defendant must be present and the safeguards mentioned are provided.

95. The accused is entitled, but is not obliged, to be present during proceedings. If a defendant, of his own free will, decides not to attend the oral proceedings and does not show any cause justifying his absence, with the

inevitable suspension of the oral proceedings, the conclusion is obvious: the proceedings will be postponed sine die, since after being further summonsed, the accused may not reappear in court. To avoid such a situation, in the very specific cases described and subject to the guarantees mentioned, oral proceedings may be held in the unjustified absence of the accused.

96. With regard to paragraph 7 of this article, and in connection with the concern expressed on this matter during the consideration of the third periodic report, the remedy of review provided for in articles 954 et seq. of the Criminal Procedure Act is designed to correct errors. It is based on the possibility that, after a person has been convicted, previously unknown evidence emerges which demonstrates his innocence. One example is someone who is serving a sentence, as perpetrator, accomplice or accessory, for the murder of a person who, following the sentence, proves to be alive. In this and similar cases regulated by the Act, convicted persons, spouses ("or those who have cohabited as such", in the terms of the amendment in Act No. 10/1992 of 30 April 1992), descendants and ancestors may apply for review, and the Supreme Court, after allowing the appeal to proceed, will, as appropriate, issue a decision annulling the sentence. Consequently, what is involved is not new proceedings, but annulment of a sentence because of the emergence of facts that are new or were unknown when the judgement was handed down and that require rectification of a sentence imposed. This right to apply for review may also be requested by the relatives of a convicted person who has died, with the aim of rehabilitating his memory (Criminal Procedure Act, arts. 954 et seq.).

97. Subject to the above clarification, we have nothing to add regarding the implementation of article 14 (7) in the Spanish legal order.

Article 15

98. There have been no changes since the previous report.

Article 16

99. There is nothing to add to what was stated in the previous report.

Right to privacy (art. 17)

100. The information given previously is updated and clarified below.

101. On 28 October 1992, Act No. 5/1992 was passed regulating the automatic processing of personal data. This Act meets the requirements and provisions of the 1991 European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, which Spain has ratified. This legislative instrument is attached as part of the Spanish Constitutional Code (document 1 1/).

102. Practising one's sexual preference forms part of an individual's privacy and cannot be a ground for discrimination. Thus, under article 491 of the draft preliminary Penal Code Organization Act (document 28 1/), citing "sexual preference" as a possible ground for denying a person a service to which he would have been entitled is one of the punishable offences

committed in connection with the exercise of the fundamental rights and public freedoms guaranteed by the Constitution. In April 1994, the Congress of Deputies adopted a resolution calling upon the Government to reform the 1984 Conscientious Objection Act "in order to amend that Act in a way which rectifies the present practical deficiencies, is in line with the most progressive tendencies of comparative law and provides an immediate solution to the present situation of recognized conscientious objectors which, for reasons for which it can in no way be held responsible, the alternative social service provided for has not been able to achieve". This amendment results from the growth in the number of conscientious objectors.

Freedom of expression and prohibition of propaganda for war and any advocacy of national, racial or religious hatred (arts. 19 and 20)

103. On this subject, the information provided in earlier reports is updated through the attached copies of recent Constitutional Court and Supreme Court judgements on the right to freedom of expression. The Constitutional Court has a wealth of jurisprudence emphasizing that "the expansive force of the right to freedom of expression necessitates a restrictive interpretation of its limits, including the right to honour". The Court has also stated that "criticism of the conduct of a public personality which is considered to have been proved can certainly be distressing - at times, extremely distressing - for the person concerned, but in a system based on democratic values, exposure to such criticism is an integral part of any office of public significance". With regard to the freedom of information, it is required that information should be correct and, if it is erroneous or unproved, that "the person conveying the information has performed his duty to verify its truthfulness, showing the thoroughness required in the particular case, the yardstick being respect for the behaviour which a professional should normally adopt in similar cases". Mention should also be made of Act No. 35/1992 of 22 December 1992 concerning satellite television, which expands the Spanish television service (documents 23 and 24 1/).

104. The following amendments relevant to the freedom of expression are introduced in the draft reform of the Penal Code currently being studied by the Government. Firstly, exceptio veritatis is allowed in all cases of insult and calumny, in accordance with the attached judgement of the European Court of Human Rights in the Castells case. Secondly, infringements of the freedom of expression which are subject to criminal penalties shall not entail the imposition of custodial penalties alone.

Right of assembly (art. 21)

105. There is nothing to add to the information already conveyed. Practical problems deriving from the exercise of this right are virtually non-existent.

Right of association (art. 20)

106. The information contained in earlier reports is repeated.

The family and protection of children (art. 23)

107. The information on this subject is updated as follows.

108. Organization Act No. 3/1989 of 21 June 1989 introduces into the chapter of the Penal Code dealing with abandonment of family and children a new offence set forth in article 487 bis:

> "Anyone who, for three consecutive months or six non-consecutive months, fails to pay any kind of maintenance to his spouse or children, as provided for in an agreement legally approved by judicial decision, in the event of legal separation, divorce or annulment of the marriage, shall be subject to the penalty of brief imprisonment and a fine of 100,000 to 500,000 pesetas."

109. This provision is designed to protect the economically weakest members of the family unit from non-compliance with a maintenance obligation. In practice, it is proving to be extremely useful in resolving the problems deriving from neglect of the family in the event of a breakdown in the marriage.

110. Also in accordance with the Committee's comments, information is provided about de facto unions. (De facto unions of unmarried couples are cohabitation arrangements in which a man and a woman live together in a stable relationship as though they were married. Nowadays couples formed by persons of the same sex who also live together in a stable relationship are also beginning to be regarded as such de facto unions.) In Spain certain effects of de facto unions are beginning to be recognized in legal texts and judicial decisions, given that, in the case of a stable family unit, they produce rights and duties among its members and, naturally, vis-à-vis any children. For a union to be considered a de facto union, it has to have stability and endurance over time, enhanced over the years by external and public display, with the persons concerned undertaking joint activities so that a community of life, interests and goals is created on the basis of a common unit.

111. While there are no precise regulations on de facto unions, that does not mean that they are overlooked by the Spanish legal order. While the Constitution does not provide for them, it does not reject them either. It can be inferred from article 32 of the Constitution relating to marriage and article 39 laying down general protection for the family and equality of children before the law, whether or not they are born in wedlock, that the framers of the Constitution did not wish to discriminate against de facto unions, still less against de facto families, who are covered by the "governing principles of social and economic policy" that include protection of the family. Under our Constitution, the family is not formed exclusively on the basis of marriage. Although neither of the articles in question expressly mentions non-matrimonial unions, their existence is implicitly acknowledged through the full and equal recognition of children born out of wedlock.

112. The actual legal situation in Spain can be seen in supplementary regulations which, for certain effects, treat such de facto unions as comparable to marriage. For example, the Act of 26 March 1984 regulating the

right of asylum and refugee status is applicable by extension to the spouse or person linked by similar emotional ties or cohabitation. Under the wording introduced by the Act of 25 June 1983, articles 11 and 18 of the Penal Code, for the purposes of kinship and grounds for absolution, equate marital status with that of persons united by similar emotional ties who are living together. Article 425 of the updated version of the Penal Code date 21 June 1999 also covers de facto unions by categorizing as an offence habitual ill-treatment between spouses or between persons united by similar emotional ties. Again, in the Organization of Justice Act of 1 July 1985, formal marriage ties are equated with de facto unions in the reference to incompatibilities and prohibitions for judges and magistrates and in the enumeration of the grounds for self-disqualification and challenge.

113. As regards civil law, de facto unions are recognized in article 101 where it establishes that alimony ceases to be payable when the recipient remarries or lives with another person as though in marriage. Similarly, article 320 of the Civil Code mentions as a ground for statutory emancipation the fact that the person exercising parental authority over a minor "contracts marriage or cohabits as though in marriage with a person distinct from the other parent". Additional Provision No. 3 of Act No. 21/87 of 11 November 1987 concerning the amendment of the Civil Code and the Civil Procedure Act in the matter of adoption also refers to "the capacity to adopt of the members of a couple permanently united by emotional ties similar to those of marriage".

114. Offspring of non-matrimonial unions obviously enjoy absolute equality in relation to children born in wedlock, given the clear provisions of article 39 of the Constitution, both in its paragraph 2 ensuring full protection for children before the law irrespective of their filiation and in its paragraph 3, which obliges parents to provide due assistance to their children, whether born in or out of wedlock, until they reach the age of majority and in other cases specified by law.

115. Under circular 2/1987 of the State Attorney-General's Office, action by the Government Procurator's Office is required to preserve and safeguard the rights of minors in cases deriving from de facto unions in which agreements between the cohabitants in the event of a break-up affect the interests of such minors. Provision is also made for action by the Government Procurator's Office when no agreements exists between the couple and there are minors or legally incompetent persons whose interests have to be defended.

116. In recent years, the courts have regularly granted applications with personal and property effects relating to children, i.e. concerning guardianship and custody, visits and holidays and maintenance, which are processed through the family courts in places where they exist and in which, by the analogy authorized by article 4 (1) of the Civil Code, all the provisions laid down in the rules for children born in wedlock are applied. This is also the case for unmarried parents who stop living together by mutual agreement.

117. Also in accordance with the Committee's comments, there follows a report on how Spain is granting the necessary protection to the family, and how it is encouraging family activities and ensuring that they are compatible with the Covenant.

118. The social, economic and legal protection of the family is one of the main aims guiding the Government's sectoral policies. In this connection, various measures are being carried out to provide support to the family, notably the following.

Fiscal measures

119. The family circumstances of individuals liable to the personal income tax are taken into account in the tax deductions allowed; these have been increased in recent years, while the definition of dependent children has been extended up to the age of 30. In addition, new features such as deductions for costs incurred for the care of children below the age of 3 and deductions for rented accommodation have been introduced.

120. The 1994 Budget Act maintains family deductions and increases them to 52,000 pesetas in the case of taxpayers or dependent ancestors or descendants whose income does not exceed 650,000 pesetas and who are sightless, crippled or physically or mentally disabled. This deduction is applicable to disabled persons related to the taxpayer for reasons of guardianship or non-remunerated support who are in the same circumstances.

Social security measures

121. Act No. 26/1990 of 20 December 1990 establishing non-contributory social security benefits provides, inter alia, for protection for dependent children, recognizing not only tax measures granting allowances but also social security measures, both of them limited by a specified maximum level of annual income.

122. This Act increased the amounts substantially, especially in the case of children affected by some degree of disability. The maximum level of annual income has been periodically updated and as from this year, by virtue of Act No. 4/1993 amending the above-mentioned Act No. 26/1990 of 20 December 1990, the General State Budget Act will establish the updated amount of annual income.

123. Another measure is the minimum social integration allowance granted by some Autonomous Communities to the most disadvantaged persons as an instrument of social protection.

124. The Coordinated Plan agreed upon with the Autonomous Communities offers a public network of basic social services benefits to local authorities with the aim of establishing cooperation between administrations so as to promote and strengthen a public network of general or community social services guaranteeing basic benefits to all citizens and thus fostering equal access to resources and coverage of basic needs.

Labour matters

125. Act No. 3/1989 of 3 March 1989 extended maternity leave, both for women in employment subject to the Workers' Statute and for public-sector staff, to 16 weeks and for the first time included the possibility that part of such leave may be enjoyed indiscriminately either by the father or by the mother, thus serving the aim of the sharing of family responsibilities between men and

women. This Act also provides for a new form of leave of absence for child-care purposes of one year reckoned from the time of childbirth, whose main feature is that it reserves the person's job.

126. The increase in the establishment of various services and day nurseries for girls and boys up to the age of 3 which has been encouraged by this Ministry through the conclusion of cooperation agreements with the Autonomous Communities and the subsidization of such programmes by the allocation of 0.5 per cent of the personal income tax has facilitated the distribution of family and professional responsibilities.

127. Demand for child-care coverage for boys and girls aged 4 and 5 has been met virtually 100 per cent by the educational system, and the educational administrations are gradually extending coverage to 3-year-olds.

128. The Ministry of Social Affairs subsidizes various programmes conducted by non-governmental organizations and social bodies:

(a) Programmes for family care and promotion of harmonious relations within the family so as to involve it in the socio-cultural development of each of its members;

(b) Programmes for the promotion of family associations aimed at bringing families together in defence of their common interests. They include activities related to the International Year of the Family.

129. Other subsidized programmes which are designed, either directly or indirectly, to improve the social situation of families include the following:

Educational programmes for socially disadvantaged girls and boys up to the age of 3;

Recreational programmes for girls and boys from socially disadvantaged areas and families;

Programmes of residential facilities for minors in a situation of social difficulty and/or conflict.

130. Subsidies are also given to programmes designed to promote social volunteer work.

131. There follows an account of the necessary protection given to children in the event of the dissolution of the marriage or the separation of the spouses.

132. In order to determine the measures to be taken for the children in the event of a matrimonial crisis between their parents, two principles must be taken into account:

133. 1. The obligations of the parents vis-à-vis their children are maintained. Article 92 (1) of the Civil Code provides: "Separation, annulment or divorce do not exempt the parents from their obligations towards the children".

134. 2. Measures regarding under-age children will be adopted to their benefit, as stipulated by article 92 (2) of the Civil Code and article 3 (1) of the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989, which was ratified by Spain and published in the Boletín Oficial del Estado on 31 December 1990.

135. The existence of a matrimonial crisis between the spouses is no reason to modify the possession and exercise of parental authority which, under article 154 of the Civil Code, belongs to both parents.

136. In some cases, if the interest of the under-age children makes it advisable, the judgement of separation or divorce may maintain the shared possession of parental authority and award its exercise either in full or in part to one of the spouses (Civil Code, art. 92 (4)). If the matrimonial proceedings reveal the existence of a reason for deprivation of parental authority, one of the parents may be deprived of that authority in the judgement of separation or divorce (Civil Code, art. 92 (3)).

137. In judgements of separation or divorce, it must be agreed which of the parents shall have custody of under-age children. In awarding custody, account must be taken of the previously mentioned principle of the "best interests of the child", the advisability, as indicated in article 92 (4), of endeavouring not to separate brothers and sisters and the rejection of any concept of guilt, unless it can have a direct influence on the offspring.

138. The parent without custody shall maintain the right of vigilance which he or she is empowered or duty-bound to exercise under article 154 of the Civil Code and shall have the right to communicate and visiting rights, as regulated by article 94.

139. Article 96 of the Civil Code provides that the use of the family home belongs to under-age children and the spouse in whose company they remain, and goes on to state that, to the extent possible, the children shall retain the same conditions as prior to the break-up of their parents for as long as they have not reached the age of majority or are entitled to maintenance. The attribution of the use of the marital home to the children is in the nature of maintenance; article 142 of the Civil Code includes the right to housing within that concept.

140. Article 93 (1) of the Civil Code provides as follows: "In all cases, the judge shall determine the contribution of each parent to providing maintenance and shall adopt appropriate measures to ensure that such maintenance is effective and adapted to the economic circumstances and needs of the children at all times". The concept of maintenance embodied in article 93 of the Civil Code has to be understood in relation to article 142 of the Code establishing the content of maintenance, as expanded and refined by court rulings that maintenance should be set in accordance with the social status and situation of the family.

141. The continuation of the parents' duties towards their children implies that both parents must contribute to the expenses involved in the children's

upkeep. This common duty does not necessarily mean equal contributions, for both parents shall contribute in accordance with their respective financial means.

142. Prior to the entry into force of Act No. 11/1990 of 15 October 1990 and pursuant to the various precepts of the Civil Code, the obligation to provide maintenance to children by virtue of matrimonial proceedings ended once the children had reached the age of majority.

143. Act No. 11/1990 of 15 October 1990 added the following paragraph 2 to article 93 of the Civil Code: "If children who have reached the age of majority or have become emancipated but do not have an income of their own live in the family home, the judge, in the same judicial decision, shall establish the maintenance that is due in accordance with articles 142 et seq. of the Civil Code."

Article 25

144. We repeat what was stated in earlier reports.

Article 27

145. The information given in earlier reports is updated by the attached copies of cooperation agreements between the Spanish State and the largest religious minorities: the Evangelical Church, the Jewish Communities and the Islamic Commission, as reflected in Acts Nos. 24, 25 and 26/1992, all dated 10 November 1992 (document 26 1/). The agreements provide solutions to matters of great importance for citizens belonging to those religions: statutes for ministers of their religion; legal protection for places of worship; attribution of civil effects to marriages held according to their own rites; religious assistance in public centres or institutions; religious education in teaching centres; tax benefits applicable to particular assets and activities of those denominations, etc.

List of documents*

Document 1. Spanish Constitutional Code

Document 2. Six Constitutional Court judgements resolving conflicts of competence between the State and the Autonomous Communities (2 October 1992, 19 October 1992, 14 January 1993 and 22 April 1993)

Document 3. Article 95 of Act No. 21/1993 of 29 December 1993 concerning the general State budget for 1994

Document 4. Constitutional Court judgement of 28 February 1994 concerning the discriminatory nature of evaluation criteria based on sex

Document 5. Institute for Women. Ministry of Social Affairs. "La Mujer en cifras 1992" (Statistics concerning women, 1992)

Document 6. Constitutional Court judgement of 11 November 1991 concerning freedom of expression (racist statements)

Document 7. Military Procedure Act, adopted by Organization Act No. 2/1989 of 13 April 1989

Document 8. Constitutional Court judgement annulling proceedings following the judgement of the European Court of Human Rights, and National High Court judgement of 30 October 1993, which brings the case to a close

Document 9. Spanish Prison Regulations

Document 10. Ombudsman Organization Act

Document 11. Report of the Ombudsman for 1992

Document 12. Act No. 35/1988 concerning assisted reproduction; Act No. 42/1988 concerning the donation and use of human embryos and foetuses or their cells, tissues or organs; Act No. 25/1990 concerning medication; and Royal Decree No. 561/1993 concerning clinical trials

Document 13. Constitutional Court judgement No. 71/1994 of 3 March 1994 concerning article 504 bis of the Criminal Procedure Act

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* These documents are available for consultation in the Secretariat's files.

Document 14.	Constitutional Court judgement No. 63/1993 of 1 March 1993 concerning insult to the flag
Document 15.	Constitutional Court judgement of 18 November 1993 concerning the Public Security Act
Document 16.	Bill for the amendment of Act No. 5/1984 of 26 March 1984 regulating the right of asylum and refugee status
Document 17.	Information on increases in human and material resources for the judicial system
Document 18.	Royal Decree No. 429/1983 of 26 March 1983 laying down procedural regulations for the public administrations in the area of liability
Document 19.	Inadmissibility decisions of the European Commission of Human Rights of 6 July and 1 September 1993
Document 20.	Constitutional Court judgement of 30 October 1991 and Supreme Court judgements of 17 November 1991 and 11 May and 5 October 1992 concerning presumption of innocence and probative force
Document 21.	Judicial regulations concerning conscientious objection
Document 22.	Statistical information concerning conscientious objection
Document 23.	Constitutional Court judgement of 16 November 1992 and Supreme Court judgement of 20 December 1990 concerning freedom of expression
Document 24.	Act No. 35/1992 of 22 December 1992 concerning satellite television
Document 25.	Judgement of the European Court of Human Rights in the Castells case
Document 26.	Cooperation agreements between the State and certain religions (Acts Nos. 24, 25, and 26/1992)
Document 27.	Constitutional Court judgement of 27 June 1990 and Supreme Court judgements of 24 February and 23 April 1990 and 11 June 1992 concerning torture
Document 28.	Draft preliminary Penal Code Organization Act
Document 29.	Act No. 9/1994 of 19 May 1994, which amends Act No. 5/1984 of 26 March 1984 regulating the right of asylum and refugee status

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